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BRANCH

April 25, 1984

Morton B. Margulies, Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Frank F. Hooper  
Administrative Judge  
University of Michigan  
School of Natural Resources  
Ann Arbor, MI 48109

Dr. Robert M. Lazo  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Duke Power Company, et al., (Catawba  
Nuclear Station, Units 1 and 2)  
Docket Nos. 50-413 and 50-414.

Gentlemen:

In a conference call of April 2, 1984, Applicants advanced a hearing schedule. Tr. 45-48, 4/2/84. Applicants have given this matter further consideration, taking into account the pre-filed testimony submitted by the parties. 1/ As a result, a revised schedule is attached. Applicants wish to point out that the approach they suggest is not unique. Rather, the Licensing Board which heard the safety and environmental issues in this

- 1/ This proposed schedule does not take into account Intervenor's exhaustive request for subpoenas. However, Applicants maintain that no subpoenas should issue. Applicants seek to voice their opposition in either a conference call prior to the May 1, 1984 hearing or at the hearing itself.

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April 25, 1984  
Page Two

proceeding followed a similar course after several weeks of hearings had elapsed. See, e.g., Tr. 6265-66, 11/8/83; Tr. 6543, 11/9/83; Tr. 8939-41, 8949-50, 12/1/83; Tr. 11,932-35, 1/30/84, copies of which are attached. See also the in-camera transcripts, e.g., IC Tr. 756, 12/15/83; IC Tr. 1001-03, 12/16/83.

Applicants maintain that the course suggested in the revised schedule is warranted, particularly in light of the fact that the commencement of the emergency planning phase of this case on May 1, 1984, will mark the 46th day of hearings. In this regard Applicants draw the Board's attention to authorities cited by Applicants during the safety phase of this case. See Tr. 1708-1711, a copy of which is attached. These authorities, along with the authority set forth in 10 C.F.R. §2.718, enable this Board to strictly manage this proceeding and to approve the schedule advanced by Applicants.

Very truly yours,

*J. Michael McGarry III*

J. Michael McGarry, III *AWC*  
Counsel for Duke Power Company

enclosures

cc: Service list

## SCHEDULE

### 5/1 Introduction/opening remarks Applicants' Panel on EPC 1 and 7

Int	- 2 hours	9:30 - 10:45	Introduction
State	- 15 min	10:45 - 11:00	Break
Staff	- 30 min	11:00 - 11:30	Introduction
Bd	- 30 min	11:30 - 1:30	Intervenors
Int	- 15 min	1:30 - 2:30	Lunch
App	- 1 hour	2:30 - 2:45	State
		2:45 - 3:15	Staff
		3:15 - 3:45	Board
		3:45 - 4:00	Intervenors
		4:00 - 4:15	Break
		4:15 - 5:15	Applicants

### 5/2 Applicants' Panel on EPC 3

Int	- 1 hour	9:00 - 10:00	Intervenors
State	- 15 min	10:00 - 10:15	State
Staff	- 15 min	10:15 - 10:30	Break
Bd	- 30 min	10:30 - 10:45	Staff
Int	- 15 min	10:45 - 11:15	Board
App	- 1 hour	11:15 - 11:30	Intervenors
		11:30 - 12:30	Applicants
		12:30 - 1:30	Lunch

### Applicants' Panel on EPC 6

Int	- 1 hour	1:30 - 2:30	Intervenors
State	- 15 min	2:30 - 2:45	State
Staff	- 15 min	2:45 - 3:00	Staff
Bd	- 30 min	3:00 - 3:15	Break
Int	- 15 min	3:15 - 3:45	Board
App	- 1 hour	3:45 - 4:00	Intervenors
		4:00 - 5:00	Applicants

### 5/3 Applicants' Panel on EPC 8

Int	- 2 hours	8:00 - 10:00	Intervenors
State	- 15 min	10:00 - 10:15	State
Staff	- 30 min	10:15 - 10:30	Break
Bd	- 1 hour	10:30 - 11:00	Staff
Int	- 15 min	11:00 - 12:00	Board
App	- 1 hour	12:00 - 12:15	Intervenors
		12:15 - 1:15	Applicants
		1:15 - 2:15	Lunch

# Applicants' Panel on EPC 9

Int	-	1 hour	2:15 -	3:15	Intervenors
State	-	15 min	3:15 -	3:30	State
Staff	-	15 min	3:30 -	3:45	Staff
Bd	-	30 min	3:45 -	4:00	Break
Int	-	15 min	4:00 -	4:30	Board
App	-	30 min	4:30 -	4:45	Intervenors
			4:45 -	5:15	Applicants

## 5/4 Applicants' Panel on EPC 11

Int	-	3 hours	9:00 -	10:15	Intervenors
State	-	15 min	10:15 -	10:30	Break
Staff	-	30 min	10:30 -	12:15	Intervenors
Bd	-	1 hour	12:15 -	1:15	Lunch
Int	-	15 min	1:15 -	1:30	State
App	-	1 hour	1:30 -	2:00	Staff
			2:00 -	3:00	Board
			3:00 -	3:15	Break
			3:15 -	3:30	Intervenors
			3:30 -	4:30	Applicants

## 5/7 Applicants' Panel on EPC 14/15

Int	-	3 hours	10:00 -	11:30	Intervenors
State	-	15 min	11:30 -	11:45	Break
Staff	-	30 min	11:45 -	1:15	Intervenors
Bd	-	1 hour	1:15 -	2:15	Lunch
Int	-	15 min	2:15 -	2:30	State
App	-	1 hour	2:30 -	3:00	Staff
			3:00 -	4:00	Board
			4:00 -	4:15	Break
			4:15 -	4:30	Intervenors
			4:30 -	5:30	Applicants

## 5/8 Applicants' Panel on EPC 18

Int	-	1 hour	9:00 -	10:00	Intervenors
State	-	15 min	10:00 -	10:15	State
Staff	-	15 min	10:15 -	10:30	Staff
Bd	-	30 min	10:30 -	10:45	Break
Int	-	15 min	10:45 -	11:15	Board
App	-	30 min	11:15 -	11:30	Intervenors
			11:30 -	12:00	Applicants
			12:00 -	1:00	Lunch

Intervenors' Panel on EPC 1<sup>1/</sup>

App	-	1 hour	1:00 -	2:00	Applicants
State	-	15 min	2:00 -	2:15	State
Staff	-	15 min	2:15 -	2:30	Staff
Bd	-	30 min	2:30 -	3:00	Board
App	-	15 min	3:00 -	3:15	Break
Int	-	30 min	3:15 -	3:30	Applicants
			3:30 -	4:00	Intervenors

5/9 Intervenors' Panel on EPC 11<sup>2/</sup>

App	-	2 hours	9:00 -	11:00	Applicants
State	-	15 min	11:00 -	11:15	Break
Staff	-	30 min	11:15 -	11:30	State
Bd	-	30 min	11:30 -	12:00	Staff
App	-	15 min	12:00 -	12:30	Board
Int	-	30 min	12:30 -	12:45	Applicants
			12:45 -	1:15	Intervenors
			1:15 -	2:15	Lunch

Staff Panel on EPC 14/15

Int	-	2 hours	2:15 -	4:15	Intervenor
State	-	15 min	4:15 -	4:30	Break
App	-	30 min	4:30 -	4:45	State
Bd	-	30 min	4:45 -	5:15	Applicants
Int	-	15 min	5:15 -	5:45	Board
Staff	-	30 min	5:45 -	6:00	Intervenors
			6:00 -	6:30	Staff

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1/ Applicants view Intervenors' Panel to consist of Ms. Andrews, Ms. Pittard and Mr. Rutledge. If the Panel approach is not used by Intervenors, 1 hour should be allocated for Ms. Andrews, 1 hour for Ms. Pittard and 2 hours for Mr. Rutledge.

2/ Applicants view Intervenors' Panel to consist of Mr. Twerry, Mr. Riley and Mr. Sholly. If the Panel approach is not used by Intervenors, 1 hour should be allocated for Mr. Twerry, 2 hours for Mr. Riley and 2 hours for Sholly.

5/10 Staff Panel on EPC 11

Int	-	3 hours	9:00 - 10:30	Intervenors
State	-	15 min	10:30 - 10:45	Break
App	-	30 min	10:45 - 12:15	Intervenors
Bd	-	30 min	12:15 - 1:15	Lunch
Int	-	15 min	1:15 - 1:30	State
Staff	-	1 hour	1:30 - 2:00	Applicant
			2:00 - 2:30	Board
			2:30 - 2:45	Intervenors
			2:45 - 3:00	Break
			3:00 - 4:00	Staff

5/11 FEMA

Int	-	3 hours	9:00 - 10:30	Intervenors
State	-	15 min	10:30 - 10:45	Break
App	-	30 min	10:45 - 12:15	Intervenors
Bd	-	30 min	12:15 - 1:15	Lunch
Int	-	15 min	1:15 - 1:30	State
Staff	-	1 hour	1:30 - 2:00	Applicants
			2:00 - 2:30	Board
			2:30 - 2:45	Intervenors
			2:45 - 3:00	Break
			3:00 - 4:00	Staff

Simons

1 JUDGE KELLEY: We are back on the record.

2 We have a brief announcement. We have given  
3 further consideration to the question of time for completing  
4 the various witnesses that are now coming before us, the  
5 nine witnesses, and I won't repeat all the considerations  
6 that go into this judgment. I think we are all familiar  
7 with them. But here is what we have decided.

8 I will be a little bit more precise in a minute,  
9 but we believe that the examination of Mr. Rockholt and  
10 Cauthen should be completed today. We are prepared to  
11 allocate all day tomorrow if necessary to Mr. Ross.

12 To indicate our reasoning, here is the way we  
13 broke it down. We figure that Palmetto goes another hour  
14 with Mr. Rockholt. That will be upwards of two and a half  
15 or close to three hours with him, allowing a half hour to  
16 forty-five minutes for the remainder of the process.  
17 We pick up after lunch with Mr. Cauthen about 1:30 or so  
18 and we can run to 4:30 with a couple of breaks and allow  
19 two and half hours for Mr. Cauthen. Another forty-five  
20 minutes would bring us to the 5:15 to 5:30 range and we could  
21 complete his examination.

22 Then tomorrow on a 9 to 5:30 type day with  
23 approaching six hours, if necessary, of cross on Mr. Ross  
24 and an hour or so for the other questioning, we could then  
25 complete those three witnesses. We think that is a reasonable

4-2

1 allocation of time. We would just add that the hours and  
2 times I just mentioned as just what goes into our reasoning  
3 and coming up with this conclusion.

4 If Palmetto wishes to allocate differently, they  
5 are free to do so. For example, if you want to go another  
6 hour after lunch with Mr. Rockholt, you are free to do that,  
7 but you would have to have an hour less either on Mr. Cauthen  
8 or Mr. Ross. That is up to you. The same with the other  
9 two. You can shuffle your time as you wish the rest of today  
10 and tomorrow on those three witnesses.

11 We will take a look at the remaining three and  
12 have some announcement to make tomorrow about them.

13 MR. GUILD: Mr. Chairman?

14 JUDGE KELLEY: Yes.

15 MR. GUILD: Those times don't seem unreasonable  
16 to me to start out with. The only thing I would ask that  
17 you note is that we have now set at least two hours tonight  
18 and probably more than two hours tonight in this in camera  
19 session. I face a very difficult problem of being present  
20 and participating in that session and then spending the  
21 rest of what is a very limited amount of time getting ready  
22 to expeditiously complete Mr. Ross tomorrow.

23 I would only ask that the Board give some considera-  
24 tion to the fact that we will be running what will be an  
25 extraordinarily long day today when we add the night session.

11/9/83

1           A     No.

2           JUDGE KELLEY: Time is up, Mr. Guild. We will  
3 take a 10-minute break.

4           MR. GUILD: Mr. Chairman, I ask the record  
5 reflect I do have additional questions for the witness.

6           JUDGE KELLEY: Well, you should have paced  
7 yourself better. Cross-examination by Palmetto is  
8 concluded. A 10-minute break.

9           (Recess.)

10          JUDGE KELLEY: Okay. Back on the record.

11          We will now have a series of questioning by  
12 different people starting with the NRC Staff.

13          Mr. Johnson?

14          MR. JOHNSON: Yes, sir.

15          BY MR. JOHNSON:

16          Q     I would like to direct you to Page 4 of your  
17 prefiled testimony. Line 11 you say, After discussing  
18 the large amount of bad welds on Class C systems that ~~this~~  
19 individual who was fired had done, you say it makes me  
20 wonder if there are other welds made that are unsafe. We  
21 inspectors could only check the outside. Other than that  
22 incident of this particular welder, is there anything in  
23 particular that you are basing your judgment on?

24          A     No. I just wrote in there that I did wonder if  
25 they have ways of finding bad welds. You know, random

12/1/83

ljoyl

P R O C E E D I N G S

JUDGE KELLEY: We have some announcements and rulings to make at this point. I realize we are cutting into the previously scheduled time. I think we will have some flexibility today, but in any event, we will start the clock running when we get the first witness on the stand.

Three items: One, a schedule to carry through the case: second, some information on the subject of INPO, composition of the panel, time allocation; and thirdly, a ruling on last night's discussion of certain documents relating to the Jackson-McKensie matter.

First of all, we are going to give you now a schedule carrying through several days, which is broken out by day, sometimes half-days and subject matter. It is not further broken down by time allocation. We will deal with that -- except on one case, on INPO, we do have time allocations -- on the others we will deal with that as we go along. In effect, we have time allocations, but right now we just have a schedule in terms of days and subject matter.

Beginning tomorrow, December 2, the Staff's case would begin, as we previously indicated, and we are allocating a maximum of three days for the Staff, that is, the 2nd through the 5th, and Tuesday the 6th. We think it might take a little less, but that is a maximum figure.

Wednesday the 7th we will devote to the INPO panel,

ljoy2

1 just the one day. On Thursday the 8th we would begin the  
2 technical issues, the three technical issues, and we have  
3 allocated a day and one-half to each of the three issues, as  
4 follows: all day Thursday on number 16 concerning the spent  
5 fuel pools, and half of Friday. Friday afternoon we will  
6 begin embrittlement, No. 44. The following Monday, the 12th,  
7 would be on embrittlement.

8 Tuesday the 13th would be on number 17, atmospheric  
9 conditions, and also half of Wednesday. Wednesday afternoon  
10 the 14th would begin the in camera matters. We expect it may  
11 go beyond that. We are not going to schedule days for in  
12 camera beyond that, for the self-sufficient reason that we  
13 have not ruled on the motions to strike, and it is just  
14 speculation. Mr. McGarry had some on that topic depending on  
15 what happens.

16 It seems to us this carries you up to that point,  
17 and we will, following our rulings early next week on the  
18 motions to strike, be in a much better position to make an  
19 allocation for that.

20 A change from what we talked about before. We have  
21 just got to move all rebuttal to the very end, so that will  
22 take, we expect, no more than one day on that, but in any  
23 event, whatever day it comes on, it is the last day. So that  
24 is a breakout by day and subject matter, with a certain  
25 open-endedness at the end until we get a fix on the motions

1 to strike. Now again, we will take up the question of time  
2 allocation within those days at a later point.

3 Mr. Johnson, on that subject -- maybe you can tell  
4 us now or you can tell us later -- we want to make some  
5 time allocations with regard to the Staff's case. I know  
6 you have described it, maybe more than once, but for our  
7 convenience, can you tell us now or maybe later, have you  
8 got one panel or two panels, who, when and so forth so we can  
9 do that?

10 MR. JOHNSON: I can do it right now, I believe.

11 JUDGE KELLEY: Why don't you go ahead.

12 MR. JOHNSON: Our panel on Contention 6 consists  
13 of Mr. Van Doorn, Mr. Bryant and Mr. Maxwell, and they are  
14 available for cross-examination during the period you  
15 mentioned.

16 JUDGE KELLEY: You would have the three in one  
17 panel throughout?

18 MR. JOHNSON: Yes, sir.

19 JUDGE KELLEY: And it would be up to the cross  
20 examiner to pick his topic, is that right?

21 MR. JOHNSON: Correct.

22 JUDGE KELLEY: One panel for however long it takes.

23 MP. JOHNSON: I think that is the most efficient way  
24 to do it.

25 JUDGE KELLEY: Fine. We will work on that. We will

mgc 3-1

1 That is the composition of the panel. There  
2 is the separate question of how the one day of questioning  
3 this panel is to be allocated, and as you can see, that  
4 question is affected by the context in which this matter  
5 arises, and that context, as we know, is a motion to reopen  
6 discovery that it is for the Board to resolve whether good  
7 cause for reopening exists.

8 By contrast, it is not an evidentiary presenta-  
9 tion by the parties. The Board came away, having read the  
10 INPO report with some doubts about whether good cause existed,  
11 and we want our doubts addressed, but with the assistance  
12 of the parties, the Board intends to take a lead role in  
13 questioning.

14 With those considerations in mind, here is our  
15 schedule for the day. We would begin at 9:00 o'clock and  
16 ask for an overview of the way in which the report was  
17 compiled and what it represents in the minds of the authors  
18 and things of that nature. Seemingly, the most appropriate  
19 people are Mr. Evans and Mr. White.

20 At 9:30, the Board would begin the questioning  
21 process. We expect that to take from 9:30 to 11:15, with  
22 a break sandwiched in between.

23 Then following the Board's questions, we have  
24 divided up equal amounts of time among the Applicants,  
25 Palmetto and the Staff in that sequence, the same sequence

mgc 3-2

1 we have had here. We have the Applicants from 11:15 to  
2 12:30. We have an hour break for lunch. We have Palmetto  
3 from 1:30 to 2:45 with a fifteen-minute break, the Staff  
4 from 3:00 o'clock to 4:15, the State of South Carolina from  
5 4:15 to 4:30, another fifteen-minute break, and the Board  
6 from 4:45 to 5:30.

7 That is our schedule and our allocation for the  
8 INPO day.

9 MR. GUILD: Mr. Chairman, may I raise a question?

10 I understood from what Mr. McGarry said yesterday  
11 or perhaps the day before, that they intend to offer, in  
12 effect, prefiled testimony for their panel members. I am  
13 just anticipating tomorrow. I appreciate the Board's approach  
14 that this is sort of a motions hearing.

15 JUDGE KELLEY: It is kind of mini-hearing.

16 MR. GUILD: An amplification of the decision on  
17 a motion. I think that is not an inappropriate way to  
18 handle it, and it certainly appears to solve a good number  
19 of my problems about how to view this evidence and what  
20 our burdens are.

21 But sort of looking at the alternative, if this  
22 evidence is to be seen as substantive evidence --

23 MR. MC GARRY: We don't have any prefiled  
24 testimony. I may have misspoken, or you may have  
25 misunderstood me.

1/30/84

1-8

1 the same format that we followed on the In Camera hearings  
2 before Christmas.

3 We do in this instance have two panels to be  
4 heard from today instead of one. We were hearing then from  
5 one applicant panel and now the staff has a panel on these  
6 subjects. So at least the two today.

7 There will be two panels on each of the two  
8 subjects today. Tomorrow there will just be the staff  
9 panel on the three subjects as we understand it. But it  
10 is our intention to call the applicant's panel first and  
11 through the questioning process, call the staff's panel  
12 second and go through the questioning process and then call  
13 the witness, as we did last time, the primary purpose being  
14 for the witness to do, well, two things, to state his  
15 evaluation, having heard the presentation and having  
16 heard the submission, what the witness thinks, and whether  
17 Mr. Nunn being the witness today, whether your concerns have  
18 been answered or whether they haven't been answered and  
19 why.

20 Then there would also be an opportunity for  
21 counsel and the Board to ask Mr. Nunn follow-up questions  
22 on his earlier statement if they wish to do that.

23 The time and sequence that we propose to  
24 follow is as follows. We are now looking just at the  
25 first order of business, namely, laminations, and we are

looking at the times for the panels and the sequence of questioning and the times for each party or the Board to ask questions.

Our sort of overall estimate is that laminations would probably take a bit longer than foreman override. It is the issue that has drawn more attention and concern from the Board.

We propose to cut out for the laminations question from, and here we are at 10 o'clock, till probably around 3 with a lunch break in there. That means allocating four hours on the point which in turn means breaking down time for the two panels and then having the concluding time for the witness, Mr. Nunn.

I don't have on here right now the for Mr. Nunn's appearance, but we did do a breakdown of the panels and we would like to do that and then we will get to the time allocation for the witnesses appearance finally.

It would run like this. I believe this is essentially the same sequence we used before. This Mr. Nunn is coming as a Board witness. The Board would be first.

I will read the sequence and then go back to the times. The Board would be first, followed by the staff, followed by Palmetto, followed by the State of South Carolina, followed by the applicants and completed by the Board, and the times are as follows.

1 The Board's lead off time is 15 minutes, the  
2 staff's time is 20 minutes, Palmetto and CESC -- and, Mr.  
3 Riley, are you participating in today's sequence?

4 MR. RILEY: If possible, yes.

5 JUDGE KELLEY: Well, this will be combined time  
6 for Palmetto and CESC of 30 minutes, the State five minutes,  
7 the applicants 15 minutes, and the Board completing with  
8 20. We expect to have more questions on the end than on  
9 the front.

10 That allocates about 105 minutes and if we  
11 multiply that by two with two panels, you come up with three  
12 hours and a half for that process. That does not include  
13 Mr. Nunn's appearance nor does it include coffee breaks.

14 So we see that as pretty well taking care of  
15 the day and using such time as we have available.

16 Now those are our preliminary matters and we  
17 would be prepared to have Mr. McGarry call the company's  
18 panel if there are not other procedural things to discuss.

19 Mr. Guild.

20 MR. GUILD: A couple of things, Judge. If we  
21 can just speak to this scheduling point a moment. The  
22 way I calculate it it boils down to a Palmetto cross of  
23 four minutes per Duke Power witness on the question of  
24 laminations.

25 Judge, you know, you have heard us on this point

Sim 1-11

1 before, and that is just totally inadequate to be able to  
2 do the job at hand.

3 Be that as it may, if the Board would entertain  
4 some flexibility between the laminations and the foreman  
5 override issue, we would certainly be of the view that the  
6 best of all possible worlds would be to take virtually all  
7 of the foreman override time and put it into the laminations  
8 issue.

9 I say that reserving our objection to the time  
10 allocation principle at the outset. What we would like to  
11 do I guess is this. We would like to try to see if we could  
12 shift some of that time back to laminations to try to get  
13 us a little more flexibility if that would be open to the  
14 Board.

15 JUDGE KELLEY: Well, the record will show we  
16 have been saying from day one of this case that if you want  
17 to shift your time around generally speaking you can do it.  
18 If you want to shift some time away from foreman override  
19 toward laminations, you can do it.

20 I don't know if you want to say right now if  
21 you want to add 10 or 15 or whatever or if you want to go  
22 ahead with your 30 and see how you stand.

23 I might be better I think to go ahead and  
24 get underway with the understanding that you can do an add-  
25 on, and we will need to tie it down to time frames.

10/4/83

1 Our third group of witnesses are the Hoopingarnier/McAfee witnesses  
2 and they are a panel of three. And I clearly think that those  
3 three individuals can speak, as a panel, to the Hoopengarnier/  
4 McAfee concerns. Their testimony is one piece of testimony  
5 sponsored by three individuals.

6 Now let's take really the two issues at hand. We  
7 have a group of management witnesses and we have a group of  
8 supervisor and welding inspectors. We think clearly, with  
9 respect to the management witnesses, the panel approach is a  
10 sound one. There is a genuine overlap in the testimony. A  
11 simple reading of the testimony would reveal that.

12 We don't mean to be repetitive or redundant, but  
13 the nature of the testimony to bridge the gap leads to that,  
14 so there is a reason for panels.

15 On the other hand, with respect to the welding  
16 inspectors, there is no clear reason for panels in the  
17 sense of these four witnesses go together. What we have  
18 done is utilized the panel approach in that instance as a  
19 means of economizing time. We also think that the panel approach,  
20 even with management, assists in economizing of time.

21 Now there's an alternative approach. This Board  
22 does have the authority to regulate the time of cross-examina-  
23 tion -- and I direct this Board's attention to, I think, one  
24 of the very significant decisions. It was by Judge Laurenson.  
25 It was in the Indian Point case Licensing Board decision. It's

1 March 4th of 1983. It's his recommended decision -- I believe  
2 he was a master, I'm not exactly sure in that particular  
3 instance, but he addressed whether or not this Licensing Board  
4 or Licensing Boards have authority to regulate, very strictly,  
5 the course of the proceeding. And he did. And I think it  
6 would be helpful if this Board would let me read into the  
7 record the page and a half of the applicable law, as he  
8 discusses it.

9 "There is precedent for imposing reasonable limita-  
10 tions on direct examination and cross-examination in decisions  
11 of the courts and the Atomic Safety and Licensing Appeal Board.  
12 In SCM Corp versus Xerox Corp, 77 F.R.D. 10 (D. Connecticut  
13 1977), District Judge Newman, after hearing 14 weeks of trial  
14 of an antitrust case, reviewed the applicable case law,  
15 treatises, and the Manual for Complex Litigation. He also  
16 considered Rule 403 of the Federal Rules of Evidence which  
17 provides that even relevant evidence may be excluded if its  
18 probative value is substantially outweighed by factors  
19 including 'undue delay' and 'waste of time.' He concluded,  
20 'however, in a protracted case such as this, the purpose of  
21 the rule can best be achieved by considering time in the aggre-  
22 gate and leaving to counsel the initial responsibility for  
23 making individualized selection as to the relative degree of  
24 probative value of the mass of evidence available.' 77 F.R.D.  
25 at 13. After considering all these factors, Judge Newman put

1 an absolute limit on the number of trial days available to the  
2 plaintiff to complete the presentation of its case-in-chief  
3 and limited cross-examination to the length of time taken for  
4 direct examination.

5           In MCI Communications Corp. versus American Tele-  
6 phone and Telegraph Company, 85 F.R.D. 28 (N.D. Illinois, 1979)  
7 The court was confronted with another protracted antitrust case.  
8 There, prior to the commencement of the trial, Judge Grady  
9 posed the issue thus, 'Whether I have authority to impose  
10 reasonable time limits upon the conduct of the trial.' Id. 30.  
11 Judge Grady quoted portions of Judge Newman's decision in SCM  
12 Corp., supra, including the following passage from Wigmore, 'It  
13 has never been supposed that a party has the absolute right to  
14 force upon an unwilling tribunal an unending and superfluous  
15 mass of testimony limited only by his own judgment and whim.'  
16 6 Wigmore Evidence Section 1907 (Chadbourn Revision 1976).  
17 Thereupon, Judge Grady limited the presentation of plaintiff's  
18 case-in-chief to 26 trial days, limited cross-examination of  
19 each witness to approximately the length of time consumed by  
20 direct examination, and limited defendant's case to approxima-  
21 tely the length of time consumed by plaintiff's case-in-  
22 chief.

23           In Northern States Power Company (Prairie Island  
24 Nuclear Generating Plants, Units 1 and 2), ALAB-252, 8 AEC 1175  
25 (1975), the Appeal Board found, inter alia, that a licensing

1 board could properly preclude or limit cross-examination and  
2 consolidate the presentation of cross-examination of several  
3 parties where appropriate."

4 I think that these passages -- this passage, the  
5 references are clear. This Board does have the authority.  
6 As an alternative, if this Board were to say Applicants,  
7 Staff and Intervenor, we now have 50 witnesses the Applicants  
8 is going to put on. Some of these witnesses, in addition to  
9 the direct case, are being provided pursuant to the subpoenas  
10 -- the subpoena request made by Palmetto Alliance. Gentlemen,  
11 you've got six weeks to try this case.

12 That then -- that's an alternative that this  
13 Board has, rather than using the panel approach. What we,  
14 quite frankly, are fearful of is that this case will indeed  
15 drag on. We recognize that this Board can manage this case.  
16 We also recognize we have been in depositions with Palmetto  
17 Alliance with many of these witnesses. And we can tell this  
18 Board that these depositions don't last one hour. They don't  
19 last two hours. Some of them last three days. And we  
20 are fearful, given the number of witnesses, that it would take  
21 a year to try this case. And when I say a year, I think that's  
22 realistic. It's a year if it's not controlled, with stopping  
23 and starting, 50 witnesses taking two days apiece, that's  
24 100 days stop and start. You have four to five days a week.  
25 I am not -- I don't think I'm exaggerating the worst case